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United States Department of the Interior

FISH AND WILDLIFE SERVICE
San Francisco Bay-Delta Fish and Wildlife Office
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Sacramento, California 95814



In reply refer to:
81420-2008-F-1481-8

MEMORANDUM

To: Acting Operations Manager, Bureau of Reclamation Mid-Pacific Region, Central Valley Office

From: Field Supervisor, U.S. Fish and Wildlife Service, Bay Delta Fish and Wildlife Office, Sacramento, California

Subject: Reinitiation of Endangered Species Act Consultation on the Coordinated Operations of the Central Valley Project and the State Water Project

This memo is in response to your memo dated February 27, 2014, describing proposed drought response measures for March 2014 and requesting reinitiation and concurrence from the U.S. Fish and Wildlife Service (Service) that the drought response actions proposed by Bureau of Reclamation (Reclamation) and the California Department of Water Resources (DWR) for March 2014 will result in no additional adverse effects on delta smelt or its critical habitat beyond those analyzed in the December 15, 2008, biological opinion (BiOp) on the Coordinated Operations of the Central Valley Project (CVP) and State Water Project (SWP) (Projects). The 2008 BiOp included a provision for the Bureau of Reclamation (Reclamation) to reinitiate consultation if the water year is classified as dry or critically dry for a second consecutive (or more) year(s). On January 29, 2014, Reclamation and DWR submitted a Temporary Urgency Change Petition Regarding Delta Water Quality (TUC Petition), requesting the State Water Resources Control Board (SWRCB) to temporarily modify requirements of water rights decision D-1641 for 180 days, with specific requests for February related to the Delta outflow and Delta cross-channel (DCC) standards described in D-1641, Table 3. In response to the TUC Petition, the SWRCB issued an Order on January 31, 2014. Approval of the TUC Petition by the SWRCB has enabled changes in operations that will provide minimum human health and safety supplies and conserve water for later protections of instream uses and water quality. On January 31, 2014, Reclamation requested reinitiation from the Service and concurrence from the Service that there would be no additional adverse effects on delta smelt or its critical habitat related to drought response actions proposed by Reclamation and DWR for the month of February than those analyzed in the 2008 BiOp. The Service issued a concurrence that the proposed modifications will have no additional adverse effects on delta smelt or its critical habitat on January 31, 2014. On February 7, 2014, the SWRCB issued a revised TUC Petition Order that provided for increased exports (limited to natural or abandoned flow) during such times when D-1641 requirements were met. Reclamation and DWR propose to extend all of the above

described provisions through March. Similarly to Reclamation's January 31, 2014, memo to the Service regarding reinitiation of consultation under the 2008 BiOp, Reclamation is requesting the proposed extension of the February actions related to Delta outflow and DCC gate operations through March 31, 2014, be considered as part of the amended project description for drought response actions and requesting concurrence that this extension will result in no additional adverse effects on delta smelt or its critical habitat for the month of March beyond those analyzed in the 2008 BiOp. The TUC Petition was jointly submitted by Reclamation and DWR and, per your request, will be considered as part of the amended project description for the purposes of reinitiating consultation. This response is in accordance with section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.) (Act).

The following sources of information were used to develop this response: (1) the January 29, 2014, Petition for Temporary Urgency Change (TUC Petition); (2) the January 31, 2014, SWRCB TUC Petition Order; (3) the February 7, 2014, revised SWRCB TUC Petition Order; (4) the January 17, 2014, Governor's Proclamation of a State of Emergency; (5) your February 27, 2014, memo to the Service with attached supporting documents; and (6) other information available to the Service.

As issued, the revised TUC Petition Order temporarily modified February D-1641 Delta outflow requirements, as well as DCC gate operations. The revised TUC Petition Order specified that the February outflow requirements, commonly known as X2 criteria, would be set at a minimum of 3,000 cubic feet per second (cfs), with the potential for higher pulse flow. The TUC Petition Order provides for minimum health and safety level of export of 1,500 cfs. In addition, reservoir releases would be reduced from those otherwise required to meet D-1641 requirements in February to conserve storage for later fishery protection, minimum human health and safety needs, and if necessary, salinity control. In addition, the Order modified DCC gate operations to allow for opening of the gates as water quality and fishery conditions warrant and as restricted to specific monitoring of fish. Finally, the revised TUC Petition Order issued February 7 provided that if precipitation events occurred that allowed Reclamation and DWR to meet the Delta outflow and DCC requirements in D-1641, exports could increase if there is natural or abandoned flow in the Delta. Reclamation and DWR propose to extend all of the above described provisions through March.

No actions under Component 1 or Component 2 of the BiOp's Reasonable and Prudent Alternative (RPA) have been taken in Water Year (WY) 2014 due to low risks of entrainment resulting from low reverse Old River and Middle River (OMR) flows, consistently low turbidity in the south and central Delta, favorable distribution of adult delta smelt outside of the south and central Delta, and the lack of salvage of delta smelt at the Projects' fish salvage facilities. These conditions can be attributed to extreme hydrologic drought conditions resulting in low Delta inflow and severely limited Project exports. To date this WY, the Service has determined that no changes in operations are necessary to protect adult or juvenile delta smelt under Components 1 and 2 of the RPA. In addition, it is our understanding that Reclamation will continue to fully meet the RPA actions outlined in the Service's 2008 BiOp. In the event that March 2014 conditions trigger RPA actions, the Service would make determinations under Component 1 Action 2 and Component 2 Action 3. This means we are no longer looking to first flush

conditions under Component 1 Action 1 and are now focused on protection of adult and juvenile delta smelt.

Although the proposed departure from D-1641 was not anticipated in the Project Description of the BiOp, or the modeling in the biological assessment, the proposed relaxation, based on the provisions provided in the TUC Petition and existing hydrologic and biological conditions for the month of March appear to be within the range of effects previously analyzed in the 2008 BiOp, therefore, the Service concurs with Reclamation's determination that the proposed modifications will have no additional adverse effects on delta smelt or its critical habitat. As described on page 280 of the BiOp, we will continue to utilize the adaptive process on a weekly basis to proactively meet the biological needs of the delta smelt within the constraints of the critically dry water year conditions.

During any period by which Reclamation and DWR are operating the Projects under a temporary change order, there will be close coordination on current and projected operations on a weekly basis through existing meetings (Smelt Working Group (SWG), Delta Conditions Team, Water Operations Management Team (WOMT), etc.). The Service will continue to make weekly determinations under our RPA actions (to include consideration of operations pursuant to a temporary change order) regarding whether changes in operations are necessary to protect listed fish species. These determinations will continue to be presented at the weekly WOMT call. The SWG and the Delta Conditions Team will also continue to provide weekly advice to the Service.

Additionally, the January 31, 2014, Order required DWR and Reclamation to convene a Real-Time Drought Operations Management Team (RTDOMT) with designated representatives from Reclamation, DWR, the SWRCB, Department of Fish and Wildlife (DFW), National Marine Fisheries Service (NMFS), and the Service to discuss potential changes to SWP and CVP operations to meet health and safety requirements and to reasonably protect all beneficial uses of water. The RTDOMT has been meeting weekly throughout the month of February to address real-time drought operations under the TUC Petition Order and additional drought-related actions that may be necessary. The RTDOMT will continue to meet weekly to ensure effective coordination among the pertinent agencies. In addition to addressing real-time drought operations management, this group will also help guide development of a CVP/SWP operational strategy and corresponding contingency plans to address operations through the spring as conditions continue to evolve. The results of these efforts would inform both future determinations with the 2008 BiOp and the 2009 NMFS Coordinated Long-term Operation of the CVP and SWP Biological Opinion (2009 NMFS BiOp) and additional TUC petitions to the SWRCB, if necessary.

The Service recommends weekly drought coordination meetings occurring during the month of March address the following topics:

- Reclamation's and DWR's identification of any future TUC Petitions for the water year, utilizing the drought exception procedures described in the 2009 NMFS BiOp, and provision of similar information to the Service related to delta smelt and their 2008 BiOp.

- For any future changes or modifications to the project description, beyond March 31, 2014, Reclamation will provide the fish agencies with detailed descriptions of the changes and a complete effects analysis and determinations of effects to listed species, unless following emergency consultation provisions. The Service will provide our findings or concurrence in writing prior to Reclamation taking the action.
- Reclamation's development of a contingency plan, to include the development of a comprehensive, system-wide approach to address future Act compliance for coordinated water project operations, beyond March 31, 2014.

We look forward to continued close coordination with you and your staff throughout this extremely challenging water year.

Please address any questions or concerns regarding this response to Mike Chotkowski, Field Supervisor or Kim S. Turner, Assistant Field Supervisor at (916) 930-5603. Please refer to Service file number 81420-2008-F-1481-8 in any future correspondence regarding this project.